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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 230

JAMES P. MITCHELL, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,

Petitioner,

vs.

JOYCE AGENCY, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

COUNTERAFFIDAVITS ON BEHALF OF JOYCE AGENCY, INC., IN RESPONSE TO SECRETARY OF LABOR'S MOTION TO JOIN OR SUBSTITUTE GOLDBLATT BROS., INC., AS A PARTY.

STANFORD CLINTON,
134 North La Salle Street,
Chicago 2, Illinois,
ROBERT A. SPRECHER,
100 West Monroe Street,
Chicago 3, Illinois,
Attorneys for Defendant-Appellant.

Of Counsel:
PRITZKER, PRITZKER & CLINTON,
CROWLEY, SPRECHER & WEEKS.

THE CUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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OCTOBER TERM, 1954.

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JAMES P. MITCHELL, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,

Petitioner,

vs.

JOYCE AGENCY, INC.,

Respondent.

AFFIDAVIT OF ROBERT A. SPRECHER.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

ROBERT A. SPRECHER, being first duly sworn, deposes and says that:

1. Affiant is an attorney licensed to practice law in the State of Illinois and one of the attorneys of record in the above-captioned case in the Court of Appeals and in the Supreme Court of the United States.

2. The evidence was taken in the District Court in the above-captioned case in April, 1952 (R. 61-92); the District Judge filed his memorandum setting forth his opinion in the case on March 19, 1953 (R. 93-99); and on May 7, 1953, the District Judge signed the Findings of Fact and Conclusions of Law and Judgment in the case (R. 101-119).

3. Between March 19 and May 7, 1953, affiant and Stanford Clinton had two meetings with Herman Grant, Re-

gional Attorney for the United States Department of Labor, for the purpose of discussing the proper form of the Findings of Fact and Conclusions of Law and Judgment to be presented to the District Judge; at the second of these meetings, Stanford Clinton advised Herman Grant that the respondent Joyce Agency, Inc., had ceased furnishing services to Goldblatt Bros., Inc., and intended to wind up its affairs, and requested Mr. Grant's opinion as to whether this fact, which had occurred subsequent to the taking of evidence in the District Court, should be suggested to or brought to the attention of the District Judge and Mr. Grant thereupon became exceedingly angry and responded that in his opinion it would be unfair and improper to do so.

4. Affiant has personal knowledge that the discontinuance by Joyce Agency, Inc., of the furnishing of services to Goldblatt Bros., Inc., and the intent of Joyce Agency, Inc., to wind up its affairs was brought directly to the attention of Herman Garnt prior to the entry of the Judgment by the District Court on May 7, 1953.

5. Stanford Clinton subsequently discussed with affiant whether the District Court should be advised that Joyce Agency, Inc., had discontinued its services to Goldblatt Bros., Inc., and concluded that since the corporation remained in existence and could conceivably resume furnishing such services, it was not necessary or desirable to do so, particularly in view of Mr. Grant's attitude.

6. Affiant had no knowledge that Joyce Agency, Inc., had been dissolved until after the Supreme Court granted certiorari and shortly before January 4, 1955, when he was advised of the dissolution by Stanford Clinton.

ROBERT A. SPRECHER.

Subscribed and sworn to before me this 1st day of February, 1955.

MARY J. BRENNAN,
Notary Public.

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Petitioner,

vs.

JOYCE AGENCY, INC.,

Respondent.

AFFIDAVIT OF STANFORD CLINTON.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

STANFORD CLINTON, being first duly sworn, deposes and says that:

1. Affiant is an attorney licensed to practice law in the State of Illinois and one of the attorneys of record in the above-captioned case in the District Court, Court of Appeals, and Supreme Court of the United States; and that he is the member of the law firm of Pritzker, Pritzker and Clinton in charge of such litigation.

2. Prior to May 7, 1953, he notified Herman Grant, Regional Attorney for the Department of Labor, that Joyce Agency, Inc., had discontinued furnishing services to Goldblatt Bros., Inc., and that Joyce Agency, Inc., intended to wind up its affairs.

3. Upon information and belief, affiant states that

shortly subsequent to affiant's notifying Herman Grant that Joyce Agency, Inc., had discontinued serving Goldblatt Bros., Inc., the Department of Labor made an investigation of the Goldblatt Warehouses to determine the status of the guards and watchmen, which positions were at that time filled with employees of Goldblatt Bros., Inc.

4. Upon information and belief, affiant states that long prior to the commencement of this litigation in the District Court, Regional Attorney Herman Grant and other members of the staff of the Department of Labor were fully aware of the relation between Goldblatt Bros., Inc., and Joyce Agency, Inc., and Boltz and Boltz.

5. Affiant gave consideration to whether the District Court should be informed of the discontinuance by Joyce Agency, Inc., of the furnishing of services to Goldblatt Bros., Inc., but concluded that since the corporation was still in existence and could resume furnishing services it was not necessary to inform the District Court.

6. Although affiant understood that there were some future plans to dissolve Joyce Agency, Inc., he was never consulted about the actual dissolution and he had no knowledge of the dissolution or the proceedings to accomplish it until after the granting of certiorari by the Supreme Court; shortly after the granting of certiorari on October 14, 1954, affiant met with Herman Buckley, a Vice-President of Goldblatt Bros., Inc., Albert H. Dolin, head of the Legal Department of Goldblatt Bros., Inc., and Captain Joseph Goldberg, Security Chief of Goldblatt Bros., Inc., and was then told for the first time by Mr. Dolin that Joyce Agency, Inc., had been dissolved.

7. Although the civil lawsuits pending against Joyce Agency, Inc., will be determined adversely to the plaintiffs therein and favorably to Joyce Agency, Inc., if the Supreme Court should affirm the Court of Appeals herein, never-

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theless reversal by the Supreme Court of the decision of the Court of Appeals will *not* determine or decide the civil lawsuits since the District Court in those cases will be required to inquire into the particular duties of the plaintiffs therein and to determine other issues not involved in this case.

8. If Goldblatt Bros., Inc., should be made a party to this case at this time it would be deprived of its constitutional right to defend itself, since Goldblatt Bros., Inc., would not have agreed to the stipulation of facts filed in the District Court and would have raised additional defenses not raised by Joyce Agency, Inc., including the defense of *res judicata* and the law of the case inasmuch as many of the issues in this case have been previously adjudicated as to Goldblatt Bros., Inc.

STANFORD CLINTON.

Subscribed and sworn to before me this 1st day of February, 1955.

MARY J. BRENNAN.

(SEAL) *Notary Public.*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 230.

JAMES P. MITCHELL, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,

Petitioner,

vs.

JOYCE AGENCY, INC.,

Respondent.

AFFIDAVIT OF ALBERT H. DOLIN.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

ALBERT H. DOLIN, being first duly sworn, deposes and says that:

1. Affiant is an attorney licensed to practice law in the State of Illinois and is employed by Goldblatt Bros., Inc., as Assistant Secretary and the head of its Legal Department, which handles the bulk of the legal work of Goldblatt Bros., Inc., the law firm of Pritzker, Pritzker and Clinton handling special legal assignments only.

2. Affiant supervised the preparation and filing of the statement of intent to dissolve and the articles of dissolution of Joyce Agency, Inc., and the entire procedure necessary to dissolve the corporation.

3. The sole reasons and motives for the dissolution of Joyce Agency, Inc., were business reasons and at no time

was affiant aware, nor did he consider, that dissolution would have any bearing on any legal issues in the above-captioned case; affiant recommended to the officers of Goldblatt Bros., Inc., that Goldblatt take over the functions performed by Joyce Agency, Inc., and that Joyce Agency, Inc., be dissolved for two reasons: (1) Goldblatt could perform the functions for at least $30,000 per year less than the cost of the services performed by Joyce Agency, Inc., and (2) direct control by Goldblatt of such functions would be more effective and efficient than performance of those functions by an outside corporation which had other and diverse interests.

4. In accordance with Illinois statutes, full and adequate provision was made for the satisfaction of any judgment, order or decree which may be entered against Joyce Agency, Inc., in any pending suit.

5. Affiant did not consult or discuss with Stanford Clinton or Robert A. Sprecher or either of them the dissolution of Joyce Agency, Inc., until after certiorari was granted by the Supreme Court in this case and, insofar as affiant knows, neither of them had any knowledge of the dissolution until after certiorari was granted.

ALBERT H. DOLIN.

Subscribed and sworn to before me this 1st day of February, 1955.

L. R. HANSKE.
Notary Public.

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JAMES P. MITCHELL, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,

Petitioner,

vs.

JOYCE AGENCY, INC.,

Respondent.

AFFIDAVIT OF EDWIN G. BOLTZ.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

EDWIN G. BOLTZ, being first duly sworn, deposes and says that:

1. Affiant became a Director and President of Joyce Agency, Inc., an Illinois corporation, on November 13, 1945, and held such positions until 1953.

2. During its existence, the office of Joyce Agency, Inc., was located at 343 South Dearborn Street, Chicago, Illinois.

3. Joyce Agency, Inc., was, prior to its dissolution on October 19, 1953, a separate and distinct entity having customers and accounts other than Goldblatt Bros., Inc., which included Meyer's Department Store, Inc., Sulka & Co., and Belmont Radio Corporation, now called Raytheon Mfg. Co., and many others; these customers and accounts were not connected, either directly or indirectly, with Goldblatt

Bros., Inc., and Goldblatt Bros., Inc., had nothing whatsoever to do with their selection.

4. During February, 1953, the employment of the entire office personnel of Joyce Agency, Inc., was terminated and insofar as affiant knows, none of such office personnel was subsequently employed by Goldblatt Bros., Inc.

5. Affiant is a partner with his brother, Leonard W. Boltz, in Boltz and Boltz, a partnership performing labor relations services for many customers and accounts, including Spiegel, Inc., which has an annual volume of business of about $140,000,000, Alden's, Inc., which has an annual volume of about $90,000,000, L. Fish Furniture Co., and others; these customers and accounts are not connected, either directly or indirectly, with Goldblatt Bros., Inc.

EDWIN G. BOLTZ.

Subscribed and sworn to before me this 1st day of February, 1955.

MARY J. BRENNAN.

(SEAL) *Notary Public.*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 230.

JAMES P. MITCHELL, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,

Petitioner,

vs.

JOYCE AGENCY, INC.,

Respondent.

AFFIDAVIT OF JOSEPH GOLDBERG.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

JOSEPH GOLDBERG, being first duly sworn, deposes and says that:

1. Affiant was a member of the City of Chicago Police Department for 38 years with the rank of Captain for 27 years; he retired from active duty under the Department's retirement pension plan on March 7, 1953 and on March 9, 1953, he was employed by Goldblatt Bros., Inc., as its Security Chief, and since that time has been in complete charge of security, including all guards and watchmen, at Goldblatt Bros., Inc.

2. Affiant's office is located in the State Street store of Goldblatt Bros., Inc.; neither affiant nor the employees of Goldblatts under his control and supervision, including guards and watchmen, handle any customers or accounts

other than Goldblatt; neither affiant nor the employees under his control have any connection with Joyce Agency, Inc., or Boltz and Boltz, nor with any of the customers and accounts formerly served by Joyce Agency, Inc., or presently serviced by Boltz and Boltz, nor with Edwin G. Boltz or Leonard W. Boltz or Marcella Main.

3. Affiant has reorganized the functions and procedures relating to security at Goldblatt Bros., Inc., which were formerly performed by Joyce Agency, Inc.; he has substantially changed, redistributed and realigned the activities, duties and functions of security personnel, including guards and watchmen; none of the former office personnel of Joyce Agency, Inc., is presently employed by Goldblatt Bros., Inc., and the functions formerly performed by Joyce Agency, Inc. office personnel are now performed by Goldblatt Bros., Inc. employees, whose labor conditions conform in all respects to the requirements of the Fair Labor Standards Act; at least sixty per cent (60%) of the personnel of Joyce Agency, Inc., other than office personnel, has been replaced by affiant.

4. The total number of persons employed as guards and watchmen at Goldblatt Bros., Inc., is approximately one hundred (100) and the number of persons employed at the Goldblatt warehouses involved in this Court is approximately twenty (20).

JOSEPH GOLDBERG.

Subscribed and sworn to before me this 1st day of February, 1955.

L. R. HANSKE.
Notary Public.

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